IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22655 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SURESHBHAI NATHUJI KHINCHI (MARWADI) - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
RULE NOT RECD BACK for Respondent(s) : 4,
MR JITENDRA MALKAN for Respondent(s) : 4,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.Sureshbhai Nathuji Khinchi (Marwadi), petitioner-detenu has filed this habeas corpus petition under Article 226

of the Constitution of India for quashing and setting aside the order of detention dated 9/11/2005 passed by the District Magistrate, Vadodara under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act-1980 (for short 'PBM Act'). Actually the detenu has been detained on 18/11/2005. Petition was filed on 22/11/2005 and matter was placed for hearing before the Hon'ble Court on 25/11/2005. On that day, this Court has issued Rule which was returnable on 26/12/2005. On behalf of respondents nos. 1 to 3, Mr.L.R.Pujari, learned APP appears. On behalf of Respondent no.4, Mr.I.A.Shaikh, learned advocate appears. So with consent of the parties, the matter has been taken up for final hearing to this Court.

2. Mr.D.M.Thakkar, learned advocate for the petitioner has stated that though there are several grounds, he confined to only one ground i.e. ground of illegible documents. This only ground is sufficient that when the authority has supplied the grounds in compilation, page-71 and page-72 and other documents for the same, which are supplied to the detenu are illegible. The learned advocate has submitted that this is failure on the part of the detaining authority to supply legible

copies of the documents. The detenu has right under Article 22(5) of the Constitution of India to have legible copies of the documents to enable the detenu to make representation in this behalf. For the same, the learned advocate for the petitioner has relied upon the judgment of the Division Bench of this Court (Coram:J.U.Mehta ad S.M.Soni, J.J.) in the case of Mulchandbhai Shobharajmal Ganvani v. The Secretary to Government of Gujarat and others, reported in 1991 (1) GLR 421 where the Division Bench of this Court has relied upon the judgment of Hon'ble Supreme Court in the case of Smt.Dharmishta Bhagat v. state of Karnataka, reported in 1989 Supp.(2) SCC 155 wherein the Hon'ble Supreme Court has observed that it is imperative that the detaining authority must serve grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention, and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make effective representation to the advisory Board and well as to the detaining authority. The Division Bench has thereafter held that hence failure on the part of the detaining authority to supply legible copy of the said

relevant documents to the detenu for making an effective representation infringed the detenu's right under Article 22(5) of the Constitution of India.

3.In my view in the present case, when I saw the said page-71 and page -72 of the documents, it seems illegible and Mr.L.R.Pujari, learned APP has also conceded that these documents are illegible.

4.In view of the judgment of the Hon'ble Supreme Court and the judgment of the Division Bench of this Court which I have referred to, this petition is required to be allowed.

5.In view of the same petition is allowed. The order of detention dated 9/11/2005 passed by the District Magistrate, Vadodara is quashed and set aside. Sureshbhai Nathuji Khinchi (Marwadi), detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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